



**Billing Code 4210-67**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**[Docket No. FR-5630-N-03]**  
**Rental Assistance Demonstration: Final Program Notice**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing and Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** On March 8, 2012, HUD announced through notice in the Federal Register the partial implementation and request for comments on the full implementation of the statutorily authorized Rental Assistance Demonstration (RAD), which has two conversion components. RAD provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access by public housing agencies (PHAs) and owners to private debt and equity to address immediate and long-term capital needs. RAD is also designed to test the extent to which residents have increased housing choices after the conversion, and the overall impact on the subject properties. The March 8, 2012 notice solicited public comment specifically on HUD's proposal for full implementation of the demonstration, but also invited comment on the policy and procedures that would govern partial implementation of the demonstration under the second component. This Federal Register notice published today announces full implementation of RAD, and the posting of the Final Program Notice (Final Program Notice, PIH-2012-32) on HUD's RAD website. As provided by the RAD statute, this notice addresses the requirement that the demonstration may proceed after publication of notice of its terms in the Federal Register. HUD's Final Program Notice takes into

consideration the public comments received in response to HUD's March 8, 2012 solicitation of comments. This Notice summarizes the key changes made to the Program Notice (PIH 2012-18) issued on March 8, 2012. This notice also meets the RAD statutory requirement to publish waivers and alternative requirements authorized by the statute at least 10 days before they may take effect, which does not prevent the demonstration from proceeding immediately.

**DATES:** Effective Dates: Sections I-IV of this notice, and section II of the appendix to this notice, are effective **[Insert date of publication in the FEDERAL REGISTER]**. The Final Program Notice, PIH-2012-32, except for the statutory and regulatory waivers specified in section I of the appendix to this notice, is effective **[Insert date of publication in the FEDERAL REGISTER]** The statutory and regulatory waivers in section I of the appendix to this notice are effective **[insert date that is 10 days after date of publication in the Federal Register.]** The conversion of Rent Supp and RAP properties under Section III of the Program Notice, which is updated by PIH-2012-32, was effective on March 8, 2012.

**FOR FURTHER INFORMATION CONTACT:** To assure a timely response, please electronically direct requests for further information to this email address: [rad@hud.gov](mailto:rad@hud.gov). Written requests may also be directed to the following address: Office of Public and Indian Housing—RAD Program, Department of Housing and Urban Development, 451 7th Street, SW, Room 2000; Washington, DC 20410.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

RAD, authorized by the Consolidated and Further Continuing Appropriations Act, 2012, (Public Law 112-55, signed November 18, 2011) (2012 Appropriations Act) allows for the conversion of assistance under the public housing, Rent Supplement (Rent Supp), Rental

Assistance (RAP), and Moderate Rehabilitation (Mod Rehab) programs (collectively, “covered programs”) to long-term, renewable assistance under Section 8. As provided in the Federal Register notice that HUD published on March 8, 2012, at 77 FR 14029, RAD has two separate components:

**First Component.** The first or competitive component of RAD allows projects funded under the public housing and Mod Rehab programs to convert to long-term Section 8 rental assistance contracts. Under this component of RAD, which is covered under Sections I and II of the Final Program Notice, PHAs and Mod Rehab owners may apply to HUD to convert to one of two forms of Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No additional or incremental funds were authorized for this component of RAD. Therefore, PHAs and Mod Rehab owners will be required to convert assistance for projects at current subsidy levels. The 2012 Appropriations Act authorizes up to 60,000 units to convert assistance under this component, to be selected competitively. The 2012 Appropriations Act further specifies that HUD shall provide an opportunity for public comment on draft eligibility and selection criteria and on the procedures that will apply to the selection of properties that will participate in this component of the demonstration. This opportunity for comment was provided by the March 8, 2012, notice.

The First Component is effective **[Insert date of publication in the FEDERAL REGISTER]**. The initial application period for this component opens on **[insert date that is 60 days after date of publication in the Federal Register.]**

**Second Component.** The second component of RAD, which is covered under Sections II and III of the Final Program Notice, allows owners of projects funded under the Rent Supp, RAP and Mod Rehab programs with a contract expiration or termination due to prepayment occurring

after October 1, 2006, and no later than September 30, 2013, to convert tenant protection vouchers (TPVs) to PBVs. There is no cap on the number of units that may be converted under this component of RAD and no requirement for competitive selection. While these conversions are not necessarily subject to current funding levels for each project or a unit cap similar to public housing conversions, the rents will be subject to rent reasonableness under the PBV program and are subject to the availability of overall appropriated amounts for TPVs.

The Second Component was effective on March 8, 2012, in Program Notice PIH 2012-18 published on the RAD website ([www.hud.gov/rad](http://www.hud.gov/rad)), and is amended in part by the Final Program Notice, PIH-2012-32, also published on the RAD website. Applications for conversion of assistance may be submitted immediately.

Waivers and Alternative Requirements. The RAD statute provides that waivers and alternative requirements authorized under the first component shall be published by notice in the Federal Register no later than 10 days before the effective date of such notice. This notice carries out that statutory requirement. Under the second component of RAD, HUD is authorized to waive or alter the provisions of subparagraphs (C) and (D) of section 8(o)(13) of the United States Housing Act of 1937. Although waivers under the second component are not subject to a Federal Register publication requirement, the second component waivers are included in this notice as a matter of convenience. This list of these waivers and alternative requirements are in the appendix of this notice.

Because the provisions covered by these waivers and alternative requirements do not affect the application process, the later effective date of the first component waivers and alternative requirements does not have any impact on the initial application period, which, as

noted above, opens on **[insert date that is 60 days after date of publication in the Federal Register]**.

## **II. Key Changes Made to HUD's Proposed RAD Demonstration**

The following highlights key changes made to the Program Notice, PIH 2012-18, issued on March 8, 2012:

### **First Component**

1. Project-Based Vouchers: applicable to both public housing and Mod Rehab properties converting assistance to PBVs:

- Provides new language prohibiting any involuntary displacement in properties using PBVs for income-mixing purposes.
- Clarifies that in excess of 50% of the units in a project can be project-based if the units qualify for exemption as elderly, disabled, scattered site, or receiving supportive services. Further clarifies that services do not have to be provided directly by the PHA or owner.
- Grandfathers current residents from any requirement to receive supportive services in a property converting assistance to PBVs.
- Removes the proposed requirement that PBVs be subject to Uniform Physical Inspections Standards; rather such properties will continue to be subject to Housing Quality Standards (HQS).
- Provides a waiver of deconcentration requirements for all conversions to PBVs.

2. Choice-Mobility Option: for residents of both public housing and Mod Rehab properties for which assistance will be converted to Project Based Rental Assistance (PBRA):

- Provides new incentives to voucher agencies to encourage the provision of Choice-Mobility turnover vouchers to agencies without access to vouchers.
  - Reduces the Choice-Mobility turnover cap from 20% to 15% at a particular project (i.e., PHAs or owners of Mod Rehab properties converting assistance could limit the percentage of households indicating a desire to move with the assistance of a Choice-Mobility voucher to no more than 15% of the total number of units in a project on an annual basis).
  - Prioritizes the award of Choice-Mobility “good-cause” exemptions as needed to PHAs so that the first priority is given to small public housing-only PHAs, the second priority to other public housing-only PHAs, and the third priority to combined agencies that dedicate more than one-third of their total annual voucher turnover to homeless or veterans.
  - Allows PHAs to apply for and potentially be awarded more than one project with a good-cause exemption from the Choice-Mobility requirement.
2. Allows small PHAs (defined as owning/managing a portfolio of public housing that is less than 250 units) to claim all projects as priority projects in the competition.
  3. Expands the descriptions of required resident notifications, protections, rights, self-sufficiency services, and waiting list procedures.
  4. Modifies the required Financing Plan benchmarks and processing requirements to be more compatible with a wide variety of sources of financing, including FHA insurance and Low Income Housing Tax Credits.

5. Eliminates the need to seek HUD approval of a change in project configuration prior to submission of a RAD application.
6. Increases the amount of pre-development funds that can be spent on a proposed public housing conversion from \$50,000 to \$100,000.
7. Provides a cap of 1,200 on the number of public housing mixed-finance units that could convert assistance under RAD; current and future Choice Neighborhoods Implementation Grant awardees seeking to convert assistance under RAD would not be subject to this cap. Specifies the eligibility for projects developed with HOPE VI grants is limited to those with a Date of Full Availability (DOFA) prior to October 1, 2002.
8. Modifies the application ranking factor for capital needs so that the point scale accounts for a broader range of capital needs that are proposed to be undertaken.
9. Allows Mod Rehab owners to designate a priority project application.
10. Provides expanded detail on the transfer of HAP contracts to other projects.

#### Second Component

1. Allows, for prospective conversions of assistance for Rent Supp and RAP, an owner to secure another agency to administer the PBVs in the event that that the local agency does not consent to administering such assistance.
2. Provides additional instruction on the inclusion of unassisted units in the event of a preservation-eligible mortgage prepayment that triggers provision of Enhanced Vouchers.
3. Clarifies that Rent Supp or RAP contract units occupied during the 24 months prior to contract termination may be included in a RAD conversion of assistance.

4. Creates a process for allocating limited TPV resources to projects with Rent Supp or RAP contracts with expiration dates after September 30, 2013 when an owner requests to prepay the mortgage.
5. Reserves the right for HUD to review and apply deconcentration requirements when a proposed conversion of assistance under RAD would result in an increase in the number of units that could-potentially receive project-based rental assistance than would be the case in a standard (non-RAD) project-basing of assistance.
6. Enhances tenant consultation requirements by including a requirement for notification of legitimate tenant organizations.
7. Clarifies requirements for 12-month notification of opt-out for Mod Rehab projects.
8. Establishes a new centralized submission processing system to allow for ease of administration.

#### Other Significant Changes

1. Updates various deadlines and implementation schedules, including the deadline for receipt of applications under the Initial Application Period under the first or competitive component of RAD.
2. Clarifies that the related contractual documents, including the Use Agreement and Housing Assistance Payments (HAP) contracts will be posted for comment following publication of the Final Notice.

### **III. The Final Program Notice and Responses to Public Comments**

The Final Program Notice for RAD, PIH-2012-32, can be found at [www.hud.gov/rad](http://www.hud.gov/rad). Also posted on HUD's RAD website is a summary of the public comments received in response to the March 8, 2012 notice and HUD's responses to the comments.



#### **IV. Environmental Review**

A Finding of No Significant Impact with respect to the environment was made in connection with the Program Notice issued on March 8, 2012, and in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding remains applicable to the Final Program Notice and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

Dated: July 16, 2012

Sandra B. Henriquez, Assistant Secretary  
for Public and Indian Housing

Carol J. Galante, Acting Assistant Secretary for Housing—Federal Housing Commissioner

**[FR-5630-N-03]**

## **APPENDIX – RAD WAIVERS AND ALTERNATIVE REQUIREMENTS**

The RAD statute provides that waivers and alternative requirements authorized under the first component shall be published by notice in the Federal Register no later than 10 days before the effective date of such notice. This appendix carries out that statutory requirement. Under the second component of RAD, HUD is authorized to waive or alter the provisions of subparagraphs (C) and (D) of section 8(o)(13) of the United States Housing Act of 1937. Although waivers under the second component are not subject to a Federal Register publication requirement, the second component waivers are included in this appendix as a matter of convenience.

Additionally, the RAD statute imposes certain requirements that must be followed under the demonstration, such as requiring long-term renewable use and affordability restrictions for assisted units in properties that convert from assistance under section 9. The RAD statute also authorizes HUD to establish requirements for converted assistance under the demonstration. HUD has used this authority, for example, by establishing in the Final Notice the requirements of 24 CFR part 880, with modifications appropriate for the converted assistance under the demonstration. These types of requirements are not subject to the publication requirement applicable to the waiver and alternative requirements listed in this appendix.

The list of waivers and alternative requirements, as described above, follows:

### **I. Public Housing Conversions**

#### **A. Changes to Requirements for Public Housing**

Use of Public Housing Funds. *Provision affected:* Section 9 of the United States Housing Act of 1937 (42 USC 1437g). *Alternative requirements:* PHAs are permitted under the Demonstration to use available public housing funding, including Operating Reserves, Capital Funds, and Replacement Housing Factor (RHF) funds as an additional source of capital to

support conversion, whether for rehabilitation or new construction. Eligible conversion-related uses for these funds include pre-development, development, or rehabilitation costs and establishment of a capital replacement reserve or operating reserve. These funds must be identified in the Financing Plan submitted to HUD for review. A PHA may not use public housing program funds, or any other funds, to augment the contract rent on a project following conversion.

A PHA may expend up to \$100,000 in public housing program funds in related pre-development conversion costs per project. A PHA may utilize other non-federal funds to support predevelopment costs. Predevelopment assistance may be used to pay for materials and services related to proposed development and may also be used for preliminary development work. Public housing program funds spent prior to the effective date of the HAP are subject to public housing procurement rules.

In the case of a PHA that is converting all units under ACC, there is no restriction on the amount of public housing funds that may be contributed to the converting project(s) at the point of conversion, i.e., the PHA may convey all program funds to the project undergoing conversion. In the case where the PHA will continue to maintain other units in its inventory under public housing ACC, a contribution to the converting project of Operating Funds that exceeds the average amount the project has held in Operating Reserves over the past three years will trigger a subsidy layering review under 24 CFR § 4.13. Similarly, any contribution of Capital Funds, including RHF funds, will trigger a subsidy layering review.

Following execution of the HAP, a PHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved Financing Plan.

Additional Fees. *Provisions affected:* 24 CFR §§ 909.190(h) and 905.10(i). *Alternative Requirements:* PHAs may not apply for Asset Repositioning Fees and will be ineligible to receive Capital Fund RHF grants for units or projects with converted assistance.

Faircloth Limit. *Provision affected:* Section 9(g)(3) of the United States Housing Act of 1937 (42 USC 1437g(g)(3)). *Alternative Requirements:* Conversion of assistance will reduce a PHA's Faircloth Limit number.

Significant Amendments to PHA Plans. *Provision affected:* 24 CFR Part 903. *Alternative Requirements:* In addition to the information already required by 24 CFR Part 903 for PHA Plan amendments, all PHAs must include the following information in their significant amendment:

1. A description of the units to be converted, including the number of units, the bedroom distribution of units, and the type of units (e.g., family, elderly/disabled, or elderly-only);
2. Any change in the number of units that is proposed as part of the conversion, including de minimis unit reductions and unit reductions that are exempt from the de minimis cap;
3. Any change in the bedroom distribution of units that is proposed as part of the conversion;
4. Any changes in the policies that govern eligibility, admission, selection, and occupancy of units at the project after it has been converted. This includes any waiting list preferences that will be adopted for the converted project; and
5. If there will be a transfer of assistance at the time of conversion, the significant amendment must include the location (including census tract) of any converted units that will be transferred off-site, as well as the information described above for the units that will be transferred. In addition, if some, but not all of the assisted units will be transferred to another site

at the time of the conversion, the significant amendment must also include a description of how the waiting list will be transferred and how households will be selected for the transfer.

Section 4 Debt. *Provision affected:* Section 4 of the United States Housing Act of 1937 (42 USC 1437b). *Alternative Requirements:* For any outstanding principal balance and interest due on loans held by HUD issued to finance original development or modernization of the covered project, HUD will exercise its waiver authority under Section 4 of the Act to forgive the loan upon conversion.

ROSS-SC. *Provisions affected:* Section 34(a) of the United States Housing Act of 1937 (42 USC 1437z-6(a)). *Alternative Requirements:* The provision is waived to permit current ROSS-SC grantees to finish out their current ROSS-SC grants once their housing is converted under RAD.

## **B. Changes to PBV Requirements for Public Housing Conversions**

Maximum Amount of PBV Assistance. *Provisions affected:* Section 8(o)(13)(B) of the United States Housing Act of 1937 (42 USC 1437f(13)(B)); 24 CFR § 983.6. *Alternative Requirements:* None. The provisions are waived.

Cap on PBV Units per Project and Supportive Services Requirement. *Provisions affected:* Section 8(o)(13)(D) of the United States Housing Act of 1937 (42 USC 1437f(13)(D)); 24 CFR §§ 983.56, 983.257(c), and 983.261(a) and (d). *Alternative Requirements:* The 25 percent limitation on the number of units that may receive PBV assistance in a project without the provision of supportive services is increased to 50 percent. An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families receiving supportive services, or are within single-family buildings.

Families living in units subject to a proposed RAD conversion must be given the option to receive supportive services. If supportive services are declined by the household, the unit shall remain under the HAP contract, the household shall not be terminated from the PBV program, and the decision to decline an offer to receive supportive services shall not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply.

Selection Procedures. *Provision affected:* 24 CFR § 983.51. *Alternative Requirements:* Selections shall be made in accordance with program requirements detailed in the Program Notice.

Site Selection. *Provisions affected:* Section 8(o)(13)(C)(ii) of the United States Housing Act of 1937 (42 USC 1437f(13)(C)); 24 CFR §§ 983.57(b)(1) and (c). *Alternative Requirements:* None. The provisions are waived. However, standards in 24 CFR § 983.57 will apply to all off-site replacement projects and transfers of assistance.

Length of PBV Contract Term. *Provisions affected:* Section 8(o)(13)(F) of the United States Housing Act of 1937 (42 USC 1437f(13)(F)); 24 CFR § 983.205(a). *Alternative Requirements:* The initial HAP term shall have an initial term of 15 years, up to 20 years upon request of the PHA and with approval of the agency administering the vouchers.

Initial Contract Rent Setting. *Provisions affected:* 24 CFR 983.301. *Alternative Requirements:* Initial contract rents generally cannot exceed the lower of: (a) current funding (adjusted for bedroom size); (b) the reasonable rent (as defined under 24 CFR § 983.303); (c) up to 110 percent of the applicable FMR (or applicable Exception Rent Payment Standard), minus any utility allowance; or (d) the rent requested by the owner.

Adjustment of Contract Rents. *Provisions affected:* Section 8(o)(13)(I) of the United States Housing Act of 1937 (42 USC 1437f(13)(I)); 24 CFR §§ 983.301 and 983.302. *Alternative Requirements:* Contract rents will be adjusted annually by HUD's Operating Cost Adjustment Factor (OCAF) at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in private market, as determined by the Contract Administrator in accordance 24 CFR § 983.303. However, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract except in limited circumstances.

Renewal of Lease. *Provisions affected:* 24 CFR § 983.257(b)(3). *Alternative Requirements:* The PHA must renew all leases upon lease expiration, unless cause exists.

Phase-in of Tenant Rent Increases. *Provisions affected:* Section 3(a)(1) of the United States Housing Act of 1937 (42 USC 1437a(a)(1)); 24 CFR §§ 983.3 and 983.353(b)(1). *Alternative Requirements:* Monthly rent increases more than the greater of 10 percent or \$25 that result solely from conversion of assistance shall be phased in over 3 years, which a PHA may extend to 5 years.

Termination Notification for Tenants. *Provision affected:* 24 CFR § 983.257. *Alternative Requirements:* In addition to the current requirements, the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease which shall not be less than:

- i. A reasonable period of time, but not to exceed 30 days:
  - If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or

- In the event of any drug-related or violent criminal activity or any felony conviction;
- ii. 14 days in the case of nonpayment of rent; and
- iii. 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.

Grievance Process. *Provision affected:* Section 6 of the United States Housing Act of 1937 (42 USC 1437d); 24 CFR § 982.555. *Alternative Requirements:* In addition to current program rules regarding informal hearings, the following additional rules apply:

i. In addition to reasons that require an opportunity for an informal hearing given in 24 CFR § 982.555(a)(1)(i)-(vi), an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to contract administrator or owner action in accordance with the individual's lease or RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

- For any hearing required under 24 CFR § 982.555(a)(1)(i)-(vi), the contract administrator will perform the hearing, as is the current standard in the program.

- For any additional hearings required under RAD, the PHA (as owner) will perform the hearing.

ii. An informal hearing will not be required for class grievances or to disputes between residents not involving the owner or contract administrator. This hearing requirement shall not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the PHA (as owner) or contract administrator.

iii. The PHA (as owner) give residents notice of their ability to request an informal hearing as outlined in 24 CFR § 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR § 982.555(a)(1)(i)-(vi).



iv. The PHA (as owner) provide opportunity for an informal hearing before an eviction.

Davis-Bacon, Section 3. Provisions affected: Section 3 of the Housing and Urban Development Act of 1968(12 USC 1701u); 24 CFR § 983.52(a); 24 CFR Part 135. *Alternative Requirements:* The Davis-Bacon Act and section 3 shall apply to all initial repairs that are identified in the Financing Plan to the extent that such repairs qualify as construction or rehabilitation, regardless of whether the project qualifies as “existing housing.” Developmental requirements under 24 CFR § 983.154 and fair housing provisions under 24 CFR § 983.152(c)(vi) continue to apply.

Waiting Lists. Provision affected: 24 CFR § 982.251(c)(2). *Alternative Requirements:* If a project-specific waiting list for the project does not exist, the PHA shall establish a waiting list in accordance 24 CFR § 903.7(b)(2)(ii)-(iv) to ensure that applicants on the PHA’s public housing community-wide waiting list have been offered placement on the converted project’s initial waiting list. For the purpose of establishing the initial waiting list, PHAs have the discretion to determine the most appropriate means of informing applicants on the public housing waiting list given the number of applicants, PHA resources, and community characteristics of the proposed conversion under RAD. Such activities should be pursuant to the PHA’s policies for waiting list management, including the obligation to affirmatively further fair housing.

A PHA may consider contacting every applicant on the public housing waiting list via direct mailing; advertising the availability of housing to the population that is less likely to apply, both minority and non-minority groups, through various forms of media (i.e., radio stations, posters, newspapers) within the marketing area, informing local non-profit entities and advocacy groups (i.e., disability rights groups); and conducting other outreach as appropriate. Applicants

on the agency's centralized public housing waiting list who wish to be placed onto the newly-established waiting list are done so in accordance with the date and time of their original application to the centralized public housing waiting list. Any activities to contact applicants on the public housing waiting list must be conducted accordance with the requirements for effective communication with persons with disabilities at 24 CFR Part 8.6 and the obligation to provide meaningful access for persons with limited English proficiency (LEP).

After the initial waiting list has been established, the PHA shall administer its waiting list for the converted project in accordance with 24 CFR § 983.251(c).

AHAP. *Provision affected:* 24 CFR Part 983 subpart D. *Alternative Requirements:* None.

There will be no AHAP contract, so all references to an AHAP are waived.

### **C. Changes to PBRA Requirements for Public Housing Conversions**

Length of PBRA Contract Term. *Provision affected:* Section 8(d)(2)(A) of the United States Housing Act of 1937 (42 USC 1437f(d)(2)(A)). *Alternative Requirements:* Covered projects shall have an initial HAP term of 20 years.

Initial Contract Rent Setting. *Provisions affected:* Sections 8(c)(1), 8(c)(5) of the United States Housing Act of 1937 (42 USC 1437f(c)(1) and (c)(5)). *Alternative Requirements:* At the time that assistance will be converted, initial contract rents will be established based on the funding for which a project is currently eligible, including pro-rated Operating Subsidy eligibility, the portion of the PHA's Capital Fund Formula Grant attributable to the project, and tenant rents. Initial contract rents will be capped at the lesser of (a) current funding; or (b) 120 percent of the Section 8 FMR, adjusted by the number of bedrooms, and after subtracting any applicable utility allowance. However, when current funding exceeds 120 percent of the FMR but where the PHA believes that such rents are below the comparable market rent, the PHA may

request an exception under which the project may receive rents in excess of 120 percent of the FMR but not in excess of the lower of comparable market rents or 150 percent of FMR. HUD will grant such a request only when HUD determines that a Rent Comparability Study (RCS), which the PHA must procure and pay for, establishes that current rents are below comparable market rents. Any such determination will be made by HUD in its sole and absolute discretion. Where contract rents are at or below 120 percent of the FMR, no RCS is required.

Adjustment of Contract Rents. *Provision affected:* Section 8(c)(2) of the United States Housing Act of 1937 (42 USC 1437f(c)(2)). *Alternative Requirements:* Contract rents will be adjusted annually by HUD's OCAF at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term.

Phase-in of Tenant Rent Increases. *Provision affected:* Section 3(a)(1) of the United States Housing Act of 1937 (42 USC 1437a(a)(1)). *Alternative Requirements:* Monthly rent increases more than the greater of 10 percent or \$25 that result solely from conversion of assistance shall be phased in over 3 years, which a PHA may extend to 5 years.

Grievance Process. *Provision affected:* 24 CFR Part 245. *Alternative Requirements:* In addition to current program rules, the following additional rules apply:

- i. Residents be provided with notice of the specific grounds of the proposed owner adverse action, as well as their right to an informal hearing with the PHA (as owner);
- ii. Residents will have an opportunity for an informal hearing with an impartial member of PHA's staff within a reasonable period of time;
- iii. Residents will have the opportunity to be represented by another person of their choice, to ask questions of witnesses, have others make statements at the hearing, and to examine any regulations and any evidence relied upon by the owner as the basis for the adverse action.

With reasonable notice to the owner, prior to hearing and at the residents' own cost, resident may copy any documents or records related to the proposed adverse action; and

iv. PHAs (as owners) provide the resident with a written decision within a reasonable period of time stating the grounds for the adverse action, and the evidence the owner relied on as the basis for the adverse action.

The PHA will be bound by decisions from these hearings, except if the:

i. Hearing concerns a matter that exceeds the authority of the impartial party conducting the hearing.

ii. Decision is contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

If the PHA (as owner) determines that it is not bound by a hearing decision, the PHA must promptly notify the resident of this determination, and of the reasons for the determination.

Davis-Bacon, Section 3. Provisions affected: Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1707u); 24 CFR § 983.52(a); Part 135. *Alternative Requirements:* The Davis-Bacon Act and Section 3 shall apply to all initial repairs that are identified in the Financing Plan to the extent that such repairs qualify as construction or rehabilitation. Davis-Bacon only applies for projects with nine or more units.

Choice-Mobility. Provision affected: 24 CFR 985.3(h). *Alternative Requirements:* HUD's goal is to have 100 percent of residents in the Demonstration offered a Choice-Mobility option within a reasonable time after conversion. However, as HUD recognizes that not all PHAs will have vouchers sufficient to support this effort, HUD will provide ranking factor points where a voucher agency has committed to provide vouchers to the covered PBRA project of a

PHA without a voucher program. Additionally, voucher agencies that make such a commitment will receive:

- Priority points for new HCV FSS coordinator positions in an upcoming FSS competition and
- The bonus points provided under the Section Eight Management Assessment Program (SEMAP) for deconcentration.

## **II. Mod Rehab Conversions**

### **A. Changes to PBV Requirements for Mod Rehab Conversions (Competitive)**

Maximum Amount of PBV Assistance. *Provisions affected:* Section 8(o)(13)(B) of the United States Housing Act of 1937 (42 USC 1437f(13)(B)); 24 CFR § 983.6. *Alternative Requirements:* None. The provisions are waived.

Cap on PBV Units per Project and Supportive Services Requirement. *Provisions affected:* Section 8(o)(13)(D) of the United States Housing Act of 1937 (42 USC 1437f(13)(D)); 24 CFR §§ 983.56, 983.257(c), and 983.261(a) and (d). *Alternative Requirements:* The 25 percent limitation on the number of units that may receive PBV assistance in a project without the provision of supportive services is increased to 50 percent. An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, or families receiving supportive services, or are within single-family buildings.

Households living in units subject to a proposed RAD conversion must be given the option to receive supportive services. If supportive services are declined by the household, the unit shall remain under the HAP contract, the household shall not be terminated from the PBV

program, and the decision to decline an offer to receive supportive services shall not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply.

Selection Procedures. *Provision affected:* 24 CFR § 983.51. *Alternative Requirements:* Selections shall be made in accordance with program requirements detailed in the Program Notice.

Site Selection. *Provisions affected:* Section 8(o)(13)(C)(ii) of the United States Housing Act of 1937 (42 USC 1437f(13)(C)); 24 CFR §§ 983.57(b)(1) and (c). *Alternative Requirements:* None. The provisions are waived. However, standards in 24 CFR § 983.57 will apply to all off-site replacement projects and transfers of assistance.

Length of PBV Contract Term. *Provisions affected:* Section 8(o)(13)(F) of the United States Housing Act of 1937 (42 USC 1437f(13)(F)); 24 CFR § 983.205(a). *Alternative Requirements:* The initial HAP term shall have an initial term of 15 years, up to 20 years upon request of the PHA and with approval of the agency administering the vouchers.

Initial Contract Rent Setting. *Provisions affected:* 24 CFR 983.301. *Alternative Requirements:* Initial contract rents generally cannot exceed the lower of: (a) current funding (adjusted for bedroom size); (b) the reasonable rent (as defined under 24 CFR § 983.303); (c) up to 110 percent of the applicable FMR (or applicable Exception Rent Payment Standard), minus any utility allowance; or (d) the rent requested by the owner.

Adjustment of Contract Rents. *Provisions affected:* Section 8(o)(13)(I) of the United States Housing Act of 1937 (42 USC 1437f(13)(I)); 24 CFR §§ 983.301 and 983.302. *Alternative Requirements:* Contract rents will be adjusted annually by HUD's Operating Cost Adjustment

Factor (OCAF) at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in private market, as determined by the Contract Administrator in accordance 24 CFR § 983.303. However, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract except in limited circumstances.

## **B. Changes to PBRA Requirements for Mod Rehab Conversions**

Length of PBRA Contract Term. *Provision affected:* Section 8(d)(2)(A) of the United States Housing Act of 1937 (42 USC 1437f(d)(2)(A)). *Alternative Requirements:* Covered projects shall have an initial HAP term of 20 years

Initial Contract Rent Setting. *Provisions affected:* Sections 8(c)(1), 8(c)(5) of the United States Housing Act of 1937 (42 USC 1437f(c)(1) and (c)(5)). *Alternative Requirements:* At the time that assistance will be converted, initial contract rents will be established based on the funding for which a project is currently eligible, including pro-rated Operating Subsidy eligibility, the portion of the PHA's Capital Fund Formula Grant attributable to the project, and tenant rents. Initial contract rents will be capped at the lesser of (a) current funding; or (b) 120 percent of the Section 8 FMR, adjusted by the number of bedrooms, and after subtracting any applicable utility allowance. However, when current funding exceeds 120 percent of the FMR but where the PHA believes that such rents are below the comparable market rent, the PHA may request an exception under which the project may receive rents in excess of 120 percent of the FMR but not in excess of the lower of comparable market rents or 150 percent of FMR. HUD will grant such a request only when HUD determines that a Rent Comparability Study (RCS), which the PHA must procure and pay for, establishes that current rents are below comparable

market rents. Any such determination will be made by HUD in its sole and absolute discretion. Where contract rents are at or below 120 percent of the FMR, no RCS is required.

Adjustment of Contract Rents. *Provision affected:* Section 8(c)(2) of the United States Housing Act of 1937 (42 USC 1437f(c)(2)). *Alternative Requirements:* Contract rents will be adjusted annually by HUD's OCAF at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term.

Choice-Mobility. *Provision affected:* 24 CFR 985.3(h). *Alternative Requirements:* HUD's goal is to have 100 percent of residents in the Demonstration offered a Choice-Mobility option within a reasonable time after conversion. However, as HUD recognizes that not all PHAs will have vouchers sufficient to support this effort, HUD will provide ranking factor points where a voucher agency has committed to provide vouchers to the covered PBRA project of a PHA without a voucher program. Additionally, voucher agencies that make such a commitment will receive:

- Priority points for new HCV FSS coordinator positions in an upcoming FSS competition and
- The bonus points provided under the Section Eight Management Assessment Program (SEMAP) for deconcentration.

### **C. Changes to PBV Requirements for Mod Rehab Conversions (Noncompetitive)**

Portfolio Limit on PBVs. *Provision affected:* Section 8(o)(13)(B) of the United States Housing Act of 1937 (42 USC 1437f(o)(13)(B)); 24 CFR § 983.6. *Alternative Requirements:* None. The statutory requirement does not apply, so HUD waives the corresponding regulation.

Cap on PBV Units per Project and Supportive Services Requirement. *Provisions affected:* Section 8(o)(13)(D) of the United States Housing Act of 1937 (42 USC 1437f(13)(D)); 24 CFR



§§ 983.56, 983.257(c), and 983.261(a) and (d). *Alternative Requirements:* The 25 percent limitation on the number of units that may receive PBV assistance in a project without the provision of supportive services is increased to 50 percent. An owner may still project-base 100 percent of the units provided at least 50 percent of the units at the project qualify for the exceptions for elderly, disabled, scattered sites, or families receiving supportive services, or are within single-family buildings.

Households living in units subject to a proposed RAD conversion must be given the option to receive supportive services. If supportive services are declined by the household, the unit shall remain under the HAP contract, the household shall not be terminated from the PBV program, and the decision to decline an offer to receive supportive services shall not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply.

Site Selection. *Provisions affected:* Section 8(o)(13)(C)(ii) of the United States Housing Act of 1937 (42 USC 1437f(13)(C)); 24 CFR §§ 983.57(b)(1) and (c). *Alternative Requirements:* None. The provisions are waived. However, standards in 24 CFR § 983.57 will apply to all off-site replacement projects and transfers of assistance. Further, HUD reserves the right to assess and consider as part of the selection process the impact of the proposed RAD conversion on deconcentration of poverty in properties where the RAD conversion would result in an increase in the number of units receiving project-based rental assistance.

Selection Procedures. *Provision affected:* 24 CFR § 983.51. *Alternative Requirements:* Selections shall be made in accordance with program requirements detailed in the Program Notice.

### III. Rent Supplement and Rental Assistance Payment Project Conversions

Portfolio Limit on PBVs. *Provision affected:* Section 8(o)(13)(B) of the United States Housing Act of 1937 (42 USC 1437f(o)(13)(B)); 24 CFR § 983.6. *Alternative Requirements:* None. The statutory requirement does not apply, so HUD waives the corresponding regulation.

Cap on PBV Units per Project and Supportive Services Requirement. *Provisions affected:* Section 8(o)(13)(D) of the United States Housing Act of 1937 (42 USC 1437f(13)(D)); 24 CFR §§ 983.56, 983.257(c), and 983.261(a) and (d). *Alternative Requirements:* The 25 percent limitation on the number of units that may receive PBV assistance in a project without the provision of supportive services is increased to 50 percent. Households living in units subject to a proposed RAD conversion must be given the option to receive supportive services. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services shall apply.

Site Selection. *Provisions affected:* Section 8(o)(13)(C)(ii) of the United States Housing Act of 1937 (42 USC 1437f(13)(C)); 24 CFR §§ 983.57(b)(1) and (c). *Alternative Requirements:* None. The provisions are waived. However, standards in 24 CFR § 983.57 will apply to all off-site replacement projects and transfers of assistance. Further, HUD reserves the right to assess and consider as part of the selection process the impact of the proposed RAD conversion on deconcentration of poverty in properties where the RAD conversion would result in an increase in the number of units receiving project-based rental assistance.

Selection Procedures. *Provision affected:* 24 CFR § 983.51. *Alternative Requirements:* Selections shall be made in accordance with program requirements detailed in the Program Notice.

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